

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO.: 8:03-CR-77-T-30-TBM

SAMI AMIN AL-ARIAN,
SAMEEH HAMMOUDEH,
GHASSAN ZAYED BALLUT,
HATIM NAJI FARIZ

**RESPONSE OF THE UNITED STATES TO
DEFENDANTS FARIZ'S AND AL-ARIAN'S OBJECTIONS
TO THE PROPOSED JURY QUESTIONNAIRE**

The United States of America, by Paul I. Perez, United States Attorney, Middle District of Florida, hereby responds to Defendants Fariz's and Al-Arian's Objections to the Proposed Jury Questionnaire.

Response to Defendant Fariz's Objections

The government objects to Defendant Fariz's request to modify the language of Question 35. As it now stands, Question 35 asks the potential jurors about their ability to listen to the evidence with an open mind and "render a verdict based solely on the evidence presented in Court when the case involves Palestinian, Arab, or Muslim men charged with various acts of terrorism." Defendant Fariz objects to the words "acts of terrorism" because he contends that neither he nor his co-defendants are charged with performing acts of terrorism. He further suggests that the questionnaire should not imply that the case involves accusations of the commission of terrorist attacks.

As he has in other pleadings in this case, the defendant is again attempting to narrowly define the case only in terms of material support to terrorists. The indictment, however, alleges far more than material support. The defendant is charged with being a member of an enterprise, the PIJ, which has and continues to engage in acts of terrorism; over a dozen such acts are explicitly pled in the overt acts in the indictment. By alleging that Fariz and his co-defendants have conspired to violate RICO and have conspired to murder and maim abroad, the indictment does indeed charge them with liability for acts of terrorism. Indeed, the United States Code specifically includes violations of 18 U.S.C. §§ 956 and 2339B as “federal crimes of terrorism.” 18 U.S.C. § 2332b(b)(5) (defining “federal crime of terrorism”). Question 25 is therefore consistent with the charges against the defendants.

Moreover, the defendant’s objection is counterintuitive: in seeking to limit the scope of Question 35 by more narrowly defining the crimes charged, he is also inviting a more limited response from the prospective juror.

Response to Defendant Al-Arian's Objections

In order to assist the Court's analysis of Defendant Al-Arian's objections, the government responds in a format similar to that used by the defendant:

P. 5. The defendant seeks to ask the jurors about their very general views of the media in a criminal case. The government objects because (1) the more specific questions about the media's handling of this case adequately address the defendant's concerns about the jurors' impartiality (see Questions 9, 10, 42, 43, 45, 46, 48, 49), and (2) there are no allegations in the case that the media has been unfair or unduly slanted in either direction.

P. 6 The defendant seeks to inquire whether the juror or a family member has worked as a translator, and whether it is possible to have multiple interpretations of the same passage. These questions are simply unnecessary in light of the information sought in Question 15a, and it impermissibly argues one of the defendant's theories in the questionnaire. As the questionnaire now stands, Question 15a will solicit sufficient information that the defendant could rely on for proper individual follow-up questions.

P. 9 The defendant's request to ask prospective jurors where they fit on the political spectrum is both offensive and unduly intrusive. The jurors are fulfilling a civic obligation, not running for political office. The related question seeking the jurors' personal characteristics, while perhaps suitable for a job interview, is similarly offensive. Moreover, the numerous "catch-all" questions in the questionnaire more than adequately address the defendant's interest in selecting impartial jurors. See Questions 25 (organizations to which the juror belongs), 75, and 76-79.

P. 10 Again, the defendant attempts to expand the scope of the questionnaire in an improper manner by asking questions about “Islamic teachings or doctrine.” This is not a case about Islamic teachings or doctrine, it is a case about terrorists who are Muslims. In any event, Questions 30, 31, 32, 33, 34, 35 and 75 more appropriately seek information about the jurors’ ability to be fair and impartial in this case.

P. 14 The defendant’s request to ask jurors what the ongoing media attention “suggests” to them about the defendants is, like his request regarding Question 10 on page 5 (above), is unnecessary given the numerous, and more specific, existing questions regarding media coverage. Moreover, Questions 45 and 46 will elicit any opinions the prospective jurors have formed, regardless of whether the media was the source of information supporting those opinions.

P. 16 The defendant again seeks additional information in Question 49 that is addressed within Question 49, as it now stands, and Question 46 as well.

P. 23 The defendant’s request to include the question “What do you think it is about yourself that would make you a good juror for this case” is, simply put, silly and not designed to seek information about a juror’s ability to be fair and impartial. The questionnaire as drafted is lengthy and highly detailed. The defendant should be able to derive enough relevant information about the prospective juror from the existing questions to determine whether the juror can be fair and impartial in this case without resorting to questions more suitable for a job interview.

In light of the foregoing, the government respectfully requests that the Court decline to adopt the objectionable changes to the questionnaire specifically addressed in this response.

Respectfully submitted,

PAUL I. PEREZ
United States Attorney

By: /s Terry A. Zitek
Terry A. Zitek
Executive Assistant U. S. Attorney
Florida Bar No. 0336531
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone: (813) 274-6000
Facsimile: (813) 274-6108
E-mail: terry.zitek@usdoj.gov

By: /s Cherie Lynn Krigsman
Cherie Lynn Krigsman
United States Attorney No. 089
Trial Attorney
U.S. Department of Justice
Criminal Division, Counterterrorism Section
E-mail: Cherie.Krigsman@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2004, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Kevin T. Beck
M. Allison Guagliardo
Linda G. Moreno
Bruce G. Howie
Wadie E. Said

I hereby certify that on August 3, 2004, a true and correct copy of the foregoing document and the notice of electronic filing was sent by United States Mail to the following non-CM/ECF participants:

William B. Moffitt, Esquire
Cozen O'Connor, P.A.
1667 K Street, N.W., Suite 500
Washington, D.C. 20006-1605

Stephen N. Bernstein, Esquire
Post Office Box 1642
Gainesville, Florida 32602

/s Cherie Lynn Krigsman
Cherie Lynn Krigsman
United States Attorney No. 089
Trial Attorney
U.S. Department of Justice
Criminal Division, Counterterrorism Section
E-mail: cherie.krigsman@usdoj.gov

/s Terry A. Zitek

Terry A. Zitek
Executive Assistant U. S. Attorney
Florida Bar No. 0336531
400 North Tampa Street, Suite 3200
Tampa, Florida 33602
Telephone: (813) 274-6000
Facsimile: (813) 274-6108
E-mail: terry.zitek@usdoj.gov